

Whether delivery charges are taxable depends on whether the charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including those charges in the selling price of the property. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

November 7, 2005

Dear Xxxxx:

This letter is in response to your letter dated July 29, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Should an out-of-state merchant be taxing the separately-stated delivery charge of a taxpayer's purchase of furniture? As you can see from the attached, we give the customer the option of arranging delivery for himself. This option is always available to the customer.

Even though the delivery charge is not on a separate *contract*, it is always separately calculated and separately stated. Furthermore, delivery charges approximate our actual internal delivery costs. As merchant, we charge our customers a delivery fee based on weight; as shipper, we likewise pay the common carrier freight charges based on weight.

The enclosed documentation demonstrates that purchasers have the option of taking delivery of the property at the seller's location in keeping with the Illinois Dept. of Revenue Regulation Title 86 Part 130 Section 130.415 'Transportation and Delivery Charges' (d).

Your early reply would be most appreciated.

Please call if elaboration is in order.

DEPARTMENT'S RESPONSE:

We apologize for the delay in responding. You have inquired whether delivery charges are taxable under the Retailers' Occupation and Use Taxes. As you note, 86 Ill. Adm. Code 130.415, entitled "Transportation and Delivery Charges" addresses this issue. That rule provides that whether delivery charges are taxable depends on "whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price." (86 Ill. Adm. Code 130.415(b)).

While the best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate contract for delivery, documentation that demonstrates that the purchaser had the option of taking delivery of the property at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. (See 86 Ill. Adm. Code 130.415(d)) To the extent that delivery charges exceed the costs of shipping, transportation, or delivery, these excess charges are subject to tax (See 86 Ill. Adm. Code 130.415(d)).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk